



Amendment No. 1
to
Contract No. MA 5600 NS160000062
for
POWERDMS Hosted Subscription
between
POWERDMS
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective January 01, 2020 to December 31, 2020. One option will remain.
- 2.0 The total contract amount is increased by \$7,386.75 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 08/23/2016 – 12/31/2019	\$22,160.25	\$22,160.25
Amendment No. 1: Option 1 – Extension 01/01/2020 – 12/31/2020	\$7,386.75	\$29,547.00

- 3.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Ben Davis 12/12/2019

Printed Name: Ben Davis
Authorized Representative
POWERDMS
101 South Garland Avenue, Suite 300
Orlando, Florida 32801
Caitlin.harrell@powerdms.com
800-749-5104

Sign/Date: Elisa Folco 12/12/19
Jim Howard
Procurement Manager
Austin Energy
721 Barton Springs Road
Austin, Texas 78704

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
POWERDMS, Inc.
FOR
POWERDMS HOSTED SUBSCRIPTION RENEWAL**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and POWERDMS, a Delaware corporation with its principal place of business at 101 S. Garland Ave, Ste 300, Orlando, Florida 32801 ("Contractor").

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the Services, as such term is defined in the Software as a Service Agreement attached hereto as Exhibit B (the "**SAAS Agreement**").

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the Services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Services. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Caitlin Harrell, Phone: (800) 749-5104, Email Address: caitlin.harrell@powerdms.com. The City's Contract Manager for the engagement shall be Elizabeth Gray, Phone: (512) 974-4150, Email: Elizabeth.Gray@austintexas.gov.

SECTION 2. SCOPE OF WORK.

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide the Services in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION:

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work, as described herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed \$22,160.25 for the initial term, \$7,386.75 for the first extension, and \$7,386.75 for the second extension, for a total estimated contract amount not to exceed \$36,933.75 comprising the software maintenance and support fees.

3.2 **Invoices**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Address:	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3.2.2 INTENTIONALLY OMITTED.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes not be included in the invoiced amount. The City confirms that City sales taxes will not apply to the Services provided pursuant to this Contract and will furnish a tax exemption certificate upon request.

3.3 **Payment**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later. Notwithstanding the foregoing, the Services will not commence until payment in full has been received by Contractor for the Services.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes. and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Travel Expenses:** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.6 **Final Payment and Close-Out**

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than (1) those previously asserted in writing and not yet settled, (2) arising from failure of the City to comply with the Contract or the terms of any warranty specified herein, or (3) arising from the City's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to 4 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.2.1 Upon expiration of the contract, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project

4.2 **Right To Assurance:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of

performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City. The City shall be in default under the Contract if the City fails to fully, timely and faithfully perform any of its material obligations under the Contract.

4.4 **Termination For Cause:** In the event of a default by either party, the other party shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless such party, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the other party's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Acceptance of Incomplete or Non-Conforming Deliverables:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.2 Delays:

5.2.2 INTENTIONALLY OMITTED.

5.2.3 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an

event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.3 **Rights to Proposal and Contractual Material:** INTENTIONALLY OMITTED

5.4 **Publications:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 **Warranty - Price**

6.1.1 INTENTIONALLY OMITTED

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 INTENTIONALLY OMITTED

6.2 **Warranty – Services:** Subject to the limitations set forth in the SaaS Agreement, the Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract. and all applicable Federal, State and local laws, rules or regulations.

6.2.1 Except as expressly provided in the SaaS Agreement, the Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then, in addition to any other remedy available to the City under this Contract, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor.

SECTION 7. MISCELLANEOUS

7.1 **Significant Event:** The Contractor shall immediately notify the Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.1.1 disposal of major assets;

7.1.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this contract;

7.1.3 any significant termination or addition of provider contracts;

7.1.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.1.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this contract;

7.1.6 reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters, to the extent it would have a material impact on the Contractor's ability to provide the Services;

7.1.7 known or anticipated sale, merger, or acquisition;

7.1.8 known, planned or anticipated stock sales;

7.1.9 any litigation filed by a member against the Contractor; or

7.1.10 significant change in market share or product focus.

7.2 **Right To Audit**

7.2.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.2.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.3 **Stop Work Notice**: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected.

7.4 **Indemnity:**

7.4.1 Definitions:

7.4.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.4.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.4.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.4.1.2 "Fault" means willful misconduct or a breach of this Contract by Contractor.

7.4.2 SUBJECT TO THE LIMITATIONS SET FORTH IN THE SAAS AGREEMENT, THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.5 **Claims**: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 ated bnd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.6 **Notices**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Gil Zilkha, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

PowerDMS, Inc.

ATTN: Candice Telfer, VP of Finance

101 S. Garland Ave, Ste 300

Orlando, FL 32801

7.7 **Confidentiality**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will

substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.8 **Advertising**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.9 **No Contingent Fees**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.10 **Gratuities**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.11 **Prohibition Against Personal Interest in Contracts**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.12 **Independent Contractor**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.13 **Assignment-Delegation**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract. The restrictions set forth in this Section 7.13 shall not restrict Contractor from assigning this Contract to the purchaser of all or substantially all of the assets of the Contractor associated with the provision of the Services, subject to such purchaser's written assumption of all of the obligations of Contractor under the Contract.

7.14 **Waiver**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.15 **Modifications**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document (excluding the SaaS Agreement) shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.16 **Interpretation**: The Contract, together with the SaaS Agreement, is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.17 **Dispute Resolution**

7.17.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.17.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.18 **Jurisdiction And Venue**: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be

construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.19 **Invalidity**: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.20 **Holidays**: The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

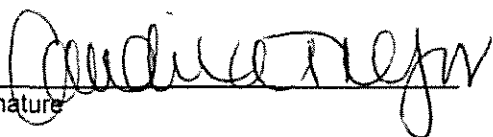
7.21 **Survivability of Obligations**: All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.22 **Non-Suspension or Debarment Certification**: The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.23 **Incorporation of Documents**: **Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>. The SaaS Agreement is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

POWERDMS, INC.

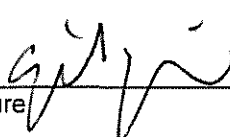
By: 
Signature

Name: Candice Tetter
Printed Name

Title: VP of Finance

Date: 8/10/16

CITY OF AUSTIN

By: 
Signature

Name: Gil Zilkha
Printed Name

Title: Contract Administrator
Corporate Contract Administrator

Date: 8/17/16

List of Exhibits

Exhibit A	PowerDMS Offer
Exhibit B	Software as a Service Agreement
Exhibit C	Non Discrimination Certification

Exhibit A

PowerDMS Offer

PowerDMS t 800.749.5104 f 407.210.0113 www.powerdms.com 101 S. Garland Ave, Ste 300 Orlando, FL 32801

New Subscription Quote

Contract Details		Order Details				
Account Number: A-1136		Order #: Q004056				
Customer: Austin Fire Department (TX)		Order Date: 01/01/2017				
Sales Rep: Michelle Smith		Valid Until: 01/01/2017				
		Subscription Start Date: 01/01/2017				
		Initial Term: 36				
Customer Contact						
Billing Contact: Austin Fire Department (TX)		Billing Contact Email: tanner.hunt@austintexas.gov				
Tanner Hunt		Phone: 512-974-4150				
Address: Accounts Payable		Fax:				
PO Box 1088						
Austin, TX 78767						
Payment Method, Terms, and Frequency						
Billing Method: Email		Notes: 3 year quote 1/1/2017 - 12/31/2019				
Payment Method: Check						
Payment Term: Net 30						
PO Number:						
Subscription Services						
Product	Description	Type	Qty	UOM	Unit Price	Total Price
SDMS-AS - 3yr	Annual PowerDMS.com hosted subscription fee	Recurring	1225	User	\$18.09	\$22,160.25
Total						\$22,160.25

Additional Terms and Conditions

Payment Terms: All invoices issued hereunder are due upon the invoice due date. The fees set forth in this Quotation Sheet are exclusive of all applicable taxes, levies, or duties imposed by taxing authorities and Customer shall be responsible for payment of any such applicable taxes, levies, or duties. All payment obligations are non-cancellable, and all fees paid are non-refundable.

Terms & Conditions: Unless otherwise agreed in writing by PowerDMS and Licensee, this Quotation Sheet and the services to be furnished pursuant to this Quotation Sheet are subject to the terms and conditions set forth here: <http://www.powerdms.com/terms-and-conditions/>. The Effective Date (as defined in the online terms and conditions of this Software as a Service Agreement) shall be the date set forth below.

Austin Fire Department (TX)

Signature: _____

Printed Name: _____

Title: _____

Date: _____

THE INFORMATION AND PRICING CONTAINED IN THIS QUOTATION SHEET IS STRICTLY CONFIDENTIAL

New Subscription Quote

Contract Details	Order Details
Account Number: «SAccount.AccountNumber»	Order #: Q004307
Customer: «SAccount.Name»	Order Date: 01/01/2020
Sales Rep: Michelle Smith	Valid Until: 07/31/2020
	Subscription Start Date: 01/01/2020
	Initial Term: 12

Customer Contact	Billing Contact
Billing Contact: «SAccount.Name»	Billing Contact Email:
Address:	Phone:
	Fax:

Payment Method, Terms, and Frequency	Notes
Billing Method: Email	Option for year 4
Payment Method: Check	
Payment Term: Net 30	
PO Number:	

Subscription Service						
Product	Description	Type	Qty	UOM	Unit Price	Total Price
SDMS-AS	Annual PowerDMS.com hosted subscription fee	Recurring	1225	User	\$6.03	\$7,386.75
Total						\$7,386.75

Additional Terms and Conditions
<p>Payment Terms: All invoices issued hereunder are due upon the invoice due date. The fees set forth in this Quotation Sheet are exclusive of all applicable taxes, levies, or duties imposed by taxing authorities and Customer shall be responsible for payment of any such applicable taxes, levies, or duties. All payment obligations are non-cancellable, and all fees paid are non-refundable.</p> <p>Terms & Conditions: Unless otherwise agreed in writing by PowerDMS and Licensee, this Quotation Sheet and the services to be furnished pursuant to this Quotation Sheet are subject to the terms and conditions set forth here: http://www.powerdms.com/terms-and-conditions/. The Effective Date (as defined in the online terms and conditions of this Software as a Service Agreement) shall be the date set forth below.</p>

«SAccount.Name»

Signature: _____

Printed Name: _____

Title: _____

Date: _____

THE INFORMATION AND PRICING CONTAINED IN THIS QUOTATION SHEET IS STRICTLY CONFIDENTIAL

New Subscription Quote

Contract Details	Order Details
Account Number: «SAccount.AccountNumber»	Order #: Q004308
Customer: «SAccount.Name»	Order Date: 01/01/2021
Sales Rep: Michelle Smith	Valid Until: 07/30/2016
	Subscription Start Date: 01/01/2021
	Initial Term: 12

Customer Contact	Billing Contact
Billing Contact: «SAccount.Name»	Billing Contact Email:
Address:	Phone:
	Fax:

Payment Method, Terms, and Frequency	Notes
Billing Method: Email	Option for year 5
Payment Method: Check	
Payment Term: Net 30	
PO Number:	

Subscription Service						
Product	Description	Type	Qty	UOM	Unit Price	Total Price
SDMS-AS	Annual PowerDMS.com hosted subscription fee	Recurring	1225	User	\$6.03	\$7,386.75
Total						\$7,386.75

Additional Terms and Conditions
<p>Payment Terms: All invoices issued hereunder are due upon the invoice due date. The fees set forth in this Quotation Sheet are exclusive of all applicable taxes, levies, or duties imposed by taxing authorities and Customer shall be responsible for payment of any such applicable taxes, levies, or duties. All payment obligations are non-cancellable, and all fees paid are non-refundable.</p> <p>Terms & Conditions: Unless otherwise agreed in writing by PowerDMS and Licensee, this Quotation Sheet and the services to be furnished pursuant to this Quotation Sheet are subject to the terms and conditions set forth here: http://www.powerdms.com/terms-and-conditions/. The Effective Date (as defined in the online terms and conditions of this Software as a Service Agreement) shall be the date set forth below.</p>

«SAccount.Name»

Signature: _____

Printed Name: _____

Title: _____

Date: _____

THE INFORMATION AND PRICING CONTAINED IN THIS QUOTATION SHEET IS STRICTLY CONFIDENTIAL

Exhibit B

POWERDMS, INC.

SOFTWARE AS A SERVICE AGREEMENT

THIS SOFTWARE AS A SERVICE AGREEMENT ("Agreement") is entered into by and between **POWERDMS, INC. ("Vendor")** and City of Austin ("**Customer**"). The term ("**Term**") of this Agreement shall begin on the date on which both parties have executed it ("**Effective Date**").

Recitals

WHEREAS, Vendor provides services ("**Vendor Services**") using Vendor's software ("**Vendor Software**") and access-controlled website ("**Vendor Site**") which Customer desires to use for the management of Customer's documents, records and data (collectively, "**Customer Content**"); and

WHEREAS, Customer desires to obtain a subscription ("**Customer Subscription**") for certain Vendor Services in accordance with the provisions of (a) this Agreement and (b) one or more quotation sheets (each a "**Quotation Sheet**") entered into by and between the parties, each of which shall specify the Vendor Services included in each Customer Subscription ("**Subscription Services**"), the term of the Customer Subscription (each a "**Subscription Term**") and the fees applicable to the Customer Subscription ("**Subscription Fees**").

NOW, THEREFORE, in consideration of the parties' mutual promises contained in this Agreement, the parties, intending to be legally bound, agree as follows:

1. Use of Subscription Services.

a) Subject to the terms and conditions of this Agreement, Vendor grants Customer and Customer's designated users ("**Users**") the nonexclusive right to use the Subscription Services during the Subscription Term.

b) Neither Customer nor any User will (i) modify, translate, or create derivative works of the Vendor Services, Vendor Software or Vendor Site (collectively, "**Vendor Technology**"); (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Vendor Software's source code or any other technology used by Vendor to provide the Vendor Service; (iii) sublicense, resell or distribute any Vendor Technology in any manner or form; (iv) share login credentials for the Subscription Services with other parties; (v) "frame" or "mirror" the Vendor Services or Vendor Site; or (vi) use or permit any User to use the Vendor Technology from any location outside of the United States.

c) Customer is responsible for maintaining the security and confidentiality of all User usernames and passwords and for all activities that occur under Customer's User accounts. Customer agrees to notify Vendor immediately of any unauthorized use of any username or password or account or other known or suspected breach of security.

d) Customer will have sole responsibility, and Vendor assumes no responsibility, for the Customer Content. Without limiting the foregoing, Customer will not submit, or permit any of its Users to submit, to the Vendor Services any Customer Content or other materials (collectively “**Restricted Materials**”) that are

- Illegal or illegally created or obtained;
- false or misleading ;
- defamatory;
- indecent or obscene;
- threatening;
- infringing of any third party rights;
- invasive of personal privacy;
- subject to mandatory public disclosure by Vendor except in accordance with Customer’s written instructions to Vendor;
- protected by the Health Insurance Portability Accountability Act (HIPAA);
- Restricted Data, as that term is defined in Title 28, Part 20, Code of Federal Regulations; or
- Personally Identifiable Information (PII), other than the PII respecting each User required for such User to be able to log into and utilize the Subscription Services.

e) Customer shall comply with all applicable laws in using the Vendor Services.

f) Vendor may, from time to time, adopt and update rules for permitted and appropriate use of the Vendor Services. Upon delivery to Customer, or publication on the Vendor Site, of any such rules or updates, any further use of the Subscription Services by Customer and Customer’s Users shall be subject to such rules.

g) Vendor reserves the right, in addition to any other remedies available to it, to suspend any User account or User activity if Vendor believes such account or activity (i) is the source of disruption of the Vendor Services or harm to the systems or infrastructure of Vendor or any third party, (ii) is being used to conduct illegal activity or activity that could potentially expose Vendor to legal liability, or (iii) has been used to submit Restricted Materials to the Vendor Services, or (iv) otherwise violates the terms and conditions set forth in this Agreement or any rules adopted by Vendor with respect to the use of the Vendor Services.

h) The Vendor Services are subject to modification from time to time at Vendor’s sole discretion; provided that any such modification will not degrade the functionality of the Subscription Services in any material manner, except as required by applicable law. Vendor will use reasonable efforts to give Customer prior written notice of any material modification.

2. Fees. Subscription Fees for each Customer Subscription shall be payable in the amounts and upon the terms specified in the Quotation Sheet. Vendor reserves the right to adjust Subscription Fees upon the expiration of any Subscription Term, with any such adjustment to be reflected in the Quotation Sheet issued by Vendor to Customer with respect to the following Subscription Term. Except as expressly provided in this Agreement, Subscription Fees are nonrefundable.

3. Customer Content.

a) As between Customer and Vendor, all Customer Content submitted to the Vendor Services by Customer or by Customer's Users will remain the sole property of Customer or such Users. Subject to the terms and conditions of this Agreement, Customer grants to Vendor a non-exclusive license to use, copy, store, transmit and display Customer Content to the extent reasonably necessary (i) to provide, maintain and improve the Vendor Services and (ii) to confirm compliance with the terms of this Agreement.

b) During the Term of this Agreement, Customer may extract Customer Content at any time through the Subscription Services. For a period of ninety (90) days after the end of the Term, Customer Content will be furnished to Customer upon written request. Thereafter, Vendor shall have no further obligation to retain any Customer Content.

c) Except as authorized by Customer (in this Agreement or otherwise) or required under applicable law, Vendor shall not disclose any Customer Content to anyone other than Vendor's employees or subcontractors who are bound by confidentiality obligations and who need to know the same to perform Vendor's obligations hereunder. The confidentiality obligations set forth in this paragraph (i) will survive for one (1) year after the termination or expiration of this Agreement, and (ii) do not apply to Customer Content which is (A) already in the possession of Vendor and not subject to a confidentiality obligation to Customer; (B) independently developed by Vendor; (C) publicly disclosed through no fault of Vendor; or (D) rightfully received by Vendor from a third party that is not under any obligation to keep such information confidential.

4. Ownership of Vendor Technology. Vendor retains all rights in the Vendor Technology, including, without limitation, any intellectual property developed by Vendor during the course of its performance of any services for Customer. Except as expressly provided in this Agreement, no license or other right is granted to Customer or its Users in the Vendor Technology. The Vendor name, the Vendor logo, and the product names associated with the Vendor Technology are trademarks of Vendor or third parties, and they may not be used without Vendor's prior written consent.

5. Indemnification.

a) Vendor will defend, indemnify, and hold Customer (and its Users, officers, directors, employees and agents) harmless from and against all costs, liabilities, losses, and expenses (including reasonable attorneys' fees) (collectively, "**Losses**") incurred in connection with any third party claim,

suit, action, or proceeding arising from the actual or alleged infringement of any United States copyright, patent, trademark, or misappropriation of a trade secret by the Subscription Services. In case of such a claim, Vendor may, in its sole discretion and at its sole cost, procure a license that will protect Customer against such claim, replace the Subscription Services with a comparable non-infringing service, or terminate the Subscription Service without fault, provided that in case of such a termination, Customer will receive a pro-rata refund of the applicable Subscription Fees. The obligations contained in this paragraph will not apply to the extent that the alleged infringement would not exist without: (i) modification of any Vendor Technology by Customer or any User, (ii) combination by Customer or any User of any Vendor Technology with any third party technology, (iii) continued use of any Vendor Technology by Customer or any User more than thirty (30) days after Customer is notified of the alleged infringement or modifications that would have avoided the alleged infringement, or (iv) used by Customer or any User of any Vendor Technology in breach of this Agreement.

b) Customer will defend, indemnify, and hold Vendor (and its officers, directors, employees and agents) harmless from and against all Losses incurred in connection with Customer's breach of Section 1 (Use of Site and Services).

c) In case of any claim that is subject to indemnification under this Agreement, the party that is indemnified ("**Indemnitee**") will provide the indemnifying party ("**Indemnitor**") reasonably prompt notice of the relevant claim. Indemnitor will defend and/or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification under this Agreement. Each party will cooperate in good faith with the other to facilitate the defense of any such claim and will tender the defense and settlement of any action or proceeding covered by this Section to the Indemnitor upon request. Claims may be settled without the consent of the Indemnitee, unless the settlement includes an admission of wrongdoing, fault or liability.

6. Disclaimers and Limitations.

a) THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY VENDOR. THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. THE VENDOR TECHNOLOGY IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS. CUSTOMER IS SOLELY RESPONSIBLE FOR DETERMINING WHETHER THE SUBSCRIPTION SERVICES ARE SUITABLE FOR CUSTOMER'S PURPOSES. VENDOR DOES NOT WARRANT THAT USE OF THE VENDOR TECHNOLOGY WILL BE ERROR-FREE OR UNINTERRUPTED. VENDOR MAKES NO WARRANTY THAT THE VENDOR TECHNOLOGY COMPLIES WITH THE LAWS OF ANY JURISDICTION OUTSIDE THE UNITED STATES.

b) Except with regard to liability for the indemnity obligations under Section 5 (Indemnification) or Customer's breach of Section 1 (Use of Site and Services), in no event will either party's aggregate liability exceed the Subscription Fees required to be paid by the Customer to Vendor

during the twelve (12) month period ending on the date on which the relevant claim is submitted. In no event will either party be liable for any indirect, special, incidental, consequential damages of any type or kind (including, without limitation, loss of data, revenue, profits, use or other economic advantage).

c) If the Subscription Services are impacted by any incident resulting in data loss, Vendor will take commercially reasonable steps to restore the Customer Content from the most recent existing, unaffected backup available. Vendor makes no representations or warranties regarding its ability to recover any Customer Content lost, and Customer acknowledges that it is responsible for conducting its own regular backups of Customer Content through the Subscription Services.

d) Third party services or content might be accessible through the Vendor Services. Vendor is not responsible for, and makes no warranty respecting, any such services or content.

7. Term and Termination

a) The Term of this Agreement shall begin on the Effective Date and end on the first anniversary of the Effective Date or, if later, after the Subscription Terms for all Customer Subscriptions have expired.

b) The Subscription Term of each Customer Subscription shall be as set forth in the Quotation Sheet for the Subscription. A Quotation Sheet issued by Vendor to Customer shall be deemed to be effective if Customer (i) executes and returns it to Vendor or (ii) remits payment to Vendor of the Subscription Fees specified in it.

c) Either party may terminate this Agreement and any Quotation Sheet at any time in the event that the other party (i) breaches any material term of this Agreement or such Quotation Sheet and fails to cure such breach within thirty (30) days after written notice thereof; or (ii) becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law, or is wound up or liquidated, voluntarily or otherwise.

d) Upon termination of this Agreement for any reason, Customer and Users shall cease all use of Vendor Services and, except as provided in Section 8 (Survival of Provisions), all rights and obligations of the parties hereunder, apart from Customer's accrued financial obligations, shall automatically cease. Notwithstanding the foregoing, termination shall not affect or prejudice any right or remedy that a party possesses with respect to any breach of this Agreement occurring on or before the date of termination.

8. Survival of Provisions. The following Sections, and all defined terms used therein, shall survive termination: all definitions, 1(b)-(e) (Use of Subscription Services), 3 (Customer Content), 4 (Ownership

of Vendor Technology), 5 (Indemnification), 6 (Disclaimers and Limitations), 7 (Term and Termination), 8 (Survival of Provisions), 9 (Notice), and 10 (Miscellaneous).

9. Notice. Vendor may give notice by means of electronic mail to Customer's email address on record in Customer's account or by written communication sent by first class mail or by courier service to Customer's address on record in Customer's account. Such notice will be deemed to have been given upon the expiration of 72 hours after mailing (if sent by first class mail) or sending by courier or 24 hours after sending (if sent by email), or, if earlier, when actually received. Customer may give notice to Vendor by email to accounting@powerdms.com. A party may, by giving notice, change its applicable address, email, or other contact information.

10. Miscellaneous

a. Choice of Law. This Agreement will be interpreted in accordance with the laws of the State of Texas and applicable federal law, without regard to conflict of laws principles.

b. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the invalid, illegal, or unenforceable provision will not affect any other provisions, and this Agreement will be construed as if the invalid, illegal, or unenforceable provision is severed and deleted from this Agreement.

c. No Agency. No joint venture, partnership, employment, or agency relationship exists between Customer and Vendor as a result of this Agreement or use of any Vendor Services.

d. No Waiver. The failure of a party to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision.

e. Force Majeure. If the performance of this Agreement by either party (other than the payment of Subscription Fees by Customer) is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the control of such party, that party will be excused from such performance to the extent that it is prevented, hindered or delayed by such causes.

f. Authority. Each of the undersigned represents and warrants that he or she has full legal authority to bind the party for which he or she purports to execute this Agreement by signing below.

g. Assignment. This Agreement may not be assigned by Customer without the prior written approval of Vendor but may be assigned by Vendor to (i) a parent or subsidiary, (ii) an acquirer of all or substantially all of Vendor's assets involved in the operations relevant to this Agreement, or (iii) a successor by merger or other combination. Any purported assignment in violation of this Section will be void. This Agreement may be enforced by and is binding on permitted successors and assigns.

h. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

i. **Entire Agreement.** This Agreement and any Quotation Sheets in effect between the parties comprise, together, the entire agreement between Customer and Vendor and supersede all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. No amendment or modification to this Agreement shall be binding unless in writing and signed by an authorized representative of each party. This Agreement supersedes, and shall not be modified or amended by, any standard terms and conditions contained or referenced in any Quotation Sheet, purchase order or other communication between Vendor and Customer.

IN WITNESS WHEREOF, the parties hereby execute this Agreement to be effective on the date on which both parties have signed it.

VENDOR

PowerDMS, Inc.

By: _____

Title: _____

Date: _____

Audine Telford
VP of Finance
8/10/16

CUSTOMER

City of Austin

By: _____

Title: _____

Date: _____

Exhibit C
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment,

recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 10th day of August, 2014

CONTRACTOR

Authorized
Signature

Title

PowerDMS, Inc.
Andrew Hogn
VP of Finance



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 07/17/2016

DEPT: Austin Fire Department

TO: Purchasing Officer or Designee

FROM: Elizabeth Gray

BUYER: Jim Howard

PHONE: (512) 974-4150

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
 - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
 - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
 - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
 - ☐ a procurement for personal, professional, or planning services
 - ☐ a procurement for work that is performed and paid for by the day as the work progresses
 - ☐ a purchase of land or right-of-way
 - ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
 - ☐ a purchase of rare books, papers, and other library materials for a public library
 - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
 - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

AFD and HSEM have been using this software since 2009. We use it to distribute policies and maintain accountability (signing of policies). This MA will be for annual maintenance.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with PowerDMS
which will cost approximately \$ 37,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Elizabeth Gray 7/15/16
Originator Date

Approved
Certification

[Signature] 7-16-16
Department Director or designee Date

Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

[Signature] 8/17/16 [Signature]
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

02/26/2013

Innovative Data Solutions, Inc.
dba PowerDMS™, Inc.
P.O. Box 2468
Orlando, FL 32802-2468
800.749.5104

PowerDMS™ Product Description/Sole Source Letter

PowerDMS™ (consisting of Policy, Standards, Test, Survey, and Training) provides an all-inclusive solution for the electronic maintenance and administration of policies, certification, and other document-based elements. Administrators can distribute policies, train personnel, and manage the holistic accreditation process, as well as testing and surveying.

PowerDMS™ Policy incorporates electronic documents with a SQL database. Existing electronic documents can easily be uploaded and distributed through Policy in the following file formats: PDF, Word, PowerPoint, and HTML. When an employee logs in, they have instant access to policies from a web browser. Once they review and understand a new or revised policy; upon completion, they are prompted for their user name and password to create their electronic “signature”, which is then stored in the database. Additionally, documents can be authored easily and sent through an intelligent workflow process to involve necessary personnel in the approval process.

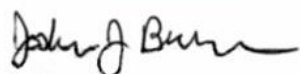
PowerDMS™ Standards provides an intelligent approach to the accreditation-management process. Standards manuals can be imported, created, or subscribed to, and furthermore maintained and distributed virtually. Corresponding standards-assessment tasks can be assigned to participants, allowing teams to work together and split the standards-compliance workload to keep progress on track. File cabinets can be eliminated once and for all with electronic file building and integration with PowerDMS™ Policy, by seamlessly highlighting relevant sections of a document, and receiving alerts on updated Policy documents used as proofs of compliance. Additional innovative features include version tracking and remote review capabilities to help further simplify the accreditation process. PowerDMS™ is the only CALEA® approved vendor solution for electronic accreditation file building and paperless assessments.

PowerDMS™ Training allows training coordinators to create and track certifications and licensure of its employees. Through customizable courses, online training can also be used to eliminate in-class instruction, allowing for efficient and effective training management. The ability to embed policies, customized tests, surveys, and all variations of media make this tool versatile and robust.

This product is unique due to its seamless integration, in application, as well as with the unique processes of accreditation by that of the Florida Commission on Accreditation (all programs), CALEA (all programs) and the Commission on Accreditation for Rehabilitation Facilities (select programs), to name a few. Unlike competitive platforms, PowerDMS™ integrates to provide proprietary linking between industry standards manuals and the documentation residing in the organization’s PowerDMS™ System. Furthermore, in-application connectivity exists between the parent modules of Policy, Training, and Standards unlike that of any other competitive solution offering.

Our products are a need-based line of software developed by Innovative Data Solutions, Inc. specifically to meet the challenges of policy management, training, and the challenges of obtaining and maintaining accreditation standards in a variety of industries. PowerDMS™ is the only integrated product of its kind on the market today. We own the development code for these products and Innovative Data Solutions, Inc. is the sole distributor of the PowerDMS™ line.

Best regards,



Joshua J. Brown
President and Chief Executive Officer

January 1, 2016